

UNITED LAWYERS

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF THE BRONX

M. [REDACTED] B. [REDACTED] AN INFANT BY HIS MOTHER
AND NATURAL GUARDIAN, TISHONNE REED.,

Plaintiff,

-against-

THE CITY OF NEW YORK, DETECTIVE ODALIS PEREZ,
TAX REG. NO 925905, INDIVIDUALLY AND AS A POLICE
OFFICER, RICARDO BOCACHICA, INDIVIDUALLY AND
AS AN OFFICER,

Defendants.

SUMMONS
INDEX NO.

Plaintiff designates Bronx
County as the Place of trial.
The basis of the venue is that
Bronx County is the Place
where the cause of action
arose.

To the above named Defendant(s):

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a
copy of your answer, or, if the complaint is not served with this summons, to serve a notice of
appearance, on the Plaintiff's Attorney with twenty (20) days after the service of this summons,
exclusive of the day of service (30) days after the service is complete if the summons is not
personally delivered to you within the State of New York); and in case of your failure to
appear or answer, judgment will be taken against you by default for the relief demanded in the
complaint.

Dated: New York, New York
September 17 2010

EMDIN & RUSSELL, LLP.
Attorneys for the Plaintiff
286 Madison Avenue Suite 2002
New York, New York 10017
(212) 683-3995

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF THE BRONX

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M [REDACTED] B [REDACTED] AN INFANT BY HIS MOTHER
AND NATURAL GUARDIAN, TISHONNE REED.,

Plaintiff,

-against-

VERIFIED COMPLAINT
INDEX NO.

THE CITY OF NEW YORK, DETECTIVE ODALIS PEREZ,
TAX REG. NO 925905, INDIVIDUALLY AND AS A POLICE
OFFICER, RICARDO BOCACHICA, INDIVIDUALLY AND
AS AN OFFICER,

Defendants.

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The plaintiff, Marcus Bonner, complaining of the defendants, by his attorneys,
Emdin & Russell, LLP., respectfully shows to this court and alleges:

1. Upon information and belief that at all times hereinafter mentioned, the defendant, the City of New York, hereinafter referred to as "City", was and still is a municipal corporation duly organized and existing under and by virtue of the laws of the State of New York.
2. Upon information and belief that at all times hereinafter mentioned, the defendant "City" its agents, servants and employees operated, maintained and controlled the Police Department of the City of New York hereinafter referred to as "NYPD" including all the police officers thereof.
3. Upon information and belief, that at all times hereinafter mentioned, specifically on the 6th day of November, 2009, at approximately 5:00 p.m., Det Odalis Perez tax reg #925905 hereinafter referred to as "Perez" and Det. Ricardo Bocachica, hereinafter referred to as "Bocachica"

11. The officers stopped the plaintiff and one other in front of 3021 Holland Avenue, Bronx, New York at approximately 5:30 p.m.
12. "The officers" ordered the plaintiff and the other individual to "freeze".
13. The plaintiff was at the front door of 3021 Holland Avenue, attempting to gain entry into the building. He did not have a gun in his hand.
14. The plaintiff's hand were up and the bb gun was tucked under his jacket, when Bocachica grabbed the plaintiff by his jacket, causing the plaintiff to stumble down the stairs and the bb gun to fall out.
15. Bocachica pushed the plaintiff to the floor, and the plaintiff was suddenly and inexplicably shot in the face, by upon information and belief, "Bocachica".
16. The plaintiff was handcuffed and then transported by ambulance to Jacobi Hospital where he was admitted and remained handcuffed and ankle cuffed to a bed for approximately two weeks.
17. Plaintiff's mother visits with her son were restricted, as he was labeled as a "prisoner who tried to shoot a cop"
18. The plaintiff's jaw was shattered and a metal plate was surgically implanted.
19. The plaintiff was under 24/7 police guard while in the hospital and was denied tv access.
20. Upon his discharge from the hospital, the plaintiff was transported to Central Booking.

agent for the defendant the "City", without just cause or provocation and in with great disregard for the plaintiff's life, health, safety and welfare discharged his weapon in the direction of the plaintiff, striking the plaintiff in the face.

29. Bocachica did not have probable to believe that either he, his partner "Perez", or anyone else was in any imminent danger when he discharged his weapon.
30. "Bocachica" used force in an excessive and an unreasonable manner when he discharged his weapon.
31. That the defendants, their agents, servants and/or employees, including but not limited to "Bocachica" acted as an agent on behalf of the defendant "City", within the scope of his employment, intentionally, willfully, and maliciously assaulted and battered the plaintiff, in that Bocachica had the real or apparent ability to cause imminent harmful or offensive bodily contact with the plaintiff and intentionally did an act which threatened to and did cause such contact and serious physical and emotional injury to the plaintiff.
32. That by reason of the aforesaid intentional assault and battery, the plaintiff suffered and still continues to suffer from serious permanent physical and psychological injuries to his face, neck, limbs and mind, and was rendered sick, sore, and lame, and among other things suffered conscious pain and suffering, and that he was otherwise

39. That said use of force by Bocachica was excessive, wrongful, and/or improperly applied, and deprived the plaintiff of his rights and liberties as set forth in the Constitutions of the United States and of the State of New York and under 42 U.S.C. Section 1983 and/or 1986.
40. That the defendant, "City" caused or created a policy and/or custom, and acted with deliberate indifference to patterns and /or police practices which included improper training, retraining, and/or supervision in the use of firearms resulting in physical injury; in their investigation into the police departments policies and procedures and compliance therewith regarding the use of deadly force, excessive or arbitrary use of force, reporting procedures, and illegal use of police equipment; in that they further condoned the violations of the civil rights of the citizens of the City of New York, including the plaintiff by routinely: failing to follow/adhere to police/patrol guidelines; failing to monitor or discipline police misconduct; failing to implement and supervise those officers placed in a Force Monitoring Program, including defendant Bocachica, allowing officers in Force Monitoring Programs to carry deadly weapon, allowing officers, in the Force Monitoring Program to use deadly weapons, failing to adequately supervise those officers in the Force Monitoring Program; and failing to gather evidence when allegations of police misconduct are involved; condoning a code of silence within the police department regarding misconduct; failing to take police reports of illegal conduct;

AS AND FOR A THIRD CAUSE OF ACTION
ALLEGING VIOLATION OF CONSTITUTIONAL RIGHTS
UNDER 42 U.S.C. SECTION 1983, BY "BOCACHICA"
AND/OR "PEREZ" IN HIS/HER INDIVIDUAL CAPACITY AND AS AN AGENT
OF
THE CITY OF NEW YORK

44. That plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs marked "1" through "43" with the same force and effect as if more fully and at length set forth herein.
45. That at all times hereinafter mentioned, Bocachica and Perez were was employed by the defendant The City of New York and/or The New York City Police Department and each was acting under the color of his/her official capacity and their acts and actions were performed under the color of the policies, statutes, ordinances, rules and regulations of the City of New York.
46. That at all times hereinbefore and hereinafter mentioned, Bocachica and/or Perez were acting pursuant to orders and directives from defendant, The City of New York.
47. That during all times hereinafter mentioned, Bocachica, acted under color and pretense of law, to wit: under color of the statutes, ordinances, regulations, customs and usages of The City of New York and/or New York City Police Department and that he was acting under the color and pretense of law, and engaged in the illegal conduct set forth this complaint to the injury of the plaintiff, and deprived him of the rights, privileges and immunities secured to him by the Fourth, Sixth, Eighth and Fourteenth

the laws secured by the Fourteenth Amendment to the Constitution of the United States.

c) The right to be free of cruel and unusual punishment

50. That by reason of the aforesaid violations, use of force, use of arbitrary, excessive and sadistic force, seizure of plaintiff's person, false testimony and reports, assault and battery of the plaintiff, the defendant "officers" violated plaintiff's rights and privileges as provided to him in the Constitution of the United States of America, and provided to him in the Constitution of the State of New York, and laws thereto, The defendant officers violated 42 U.S.C. §1983.

51. That as a direct proximate result of the defendants actions the plaintiff, was subjected to severe physical and emotional trauma, great indignities and humiliation, and pain and distress of mind and body

52. That by reason of the aforesaid, the plaintiff was injured in mind and body, still suffers and upon information and belief, will continue to suffer great physical and mental pain.

53. That by reason of the aforesaid, the plaintiff, has been damaged in a sum exceeding the jurisdiction of the lower courts, and seeks compensatory damages, plus, punitive damages, costs, attorneys fees, expert fees, as set forth and provided by 42 U.S.C. Section 1988, and such other relief as to the court may seem just and proper.

wholly and solely by reason of the negligence or deliberate indifference of the defendant "City", its' agents, servants and/or employees including "Bocachica", and/or "Perez" without any negligence on the part of the plaintiff contributing thereto.

58. That by reason of the aforesaid, the plaintiff was injured in mind and body, and he was rendered sick, sore, lame and disabled and so remains, and the plaintiff has been otherwise damaged.

59. That by reason of the aforesaid negligence, the plaintiff has been damaged in a sum exceeding the jurisdictional limits of the lower courts.

**AS AND FOR A FIFTH CAUSE OF ACTION ON
BEHALF OF PLAINTIFF AGAINST DEFENDANT "CITY":**

60. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs marked "1" through "59" with the same force and effect as if more fully and at length set forth herein.

61. That the defendant "City", its' agents, servants and/or employees negligently, carelessly and recklessly failed to properly train, supervise, and monitor their employees, including defendant "Bocachica", in that they failed to train their employees: in the proper use of physical force to effect an arrest; when and how to discharge a firearm; to control their tempers and exercise the proper deportment and temperament; to

68. That the aforesaid occurrence, to wit: the assault and battery, and the resulting injuries to mind and body therefrom, were caused wholly and solely by reason of the negligence of the "City" and its' agents, servants and/or employees including "Bocachica" without any negligence on the part of the plaintiff contributing thereto.
69. That by reason of the aforesaid, the plaintiff was injured in mind and body, still suffers and upon information and belief, will continue to suffer great physical and/or mental pain and anguish, and he was rendered sick, sore, lame and disabled, and the plaintiff has been otherwise damaged.
70. That by reason of the aforesaid negligence, the plaintiff has been damaged in a sum exceeding the jurisdictional limits of the lower courts.

**AS AND FOR A Sixth CAUSE OF ACTION FOR INTENTIONAL
INFLICTION OF EMOTIONAL DISTRESS THE PLAINTIFF ALLEGES:**

71. That plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs marked "1" through "70" with the same force and effect as if more fully and at length set forth herein.
72. That the officers acted in a manner that exceeded all reasonable bounds of decency with an intent to inflict emotional distress upon the plaintiff.
73. That the plaintiff did sustain emotional distress as a result of the defendant officers conduct and the city under the doctrine of respondent

ATTORNEY'S VERIFICATION

The undersigned, an attorney admitted to practice in the Courts of the State of New York certifies as follows:

That I am an attorney associated with the law firm of Emdin, & Russell, LLP., the attorneys of record for the Plaintiff in the within action; that I have read the foregoing Amended Summons and Amended Verified Complaint and know the contents thereof; that the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters, I believe them to be true.

The undersigned further states that the reason this Summons and Complaint is made by me and not by the Plaintiff is that the Plaintiff does not reside within the county in which my office is located.

The grounds of my belief as to all matters stated upon my knowledge are my interviews with the Plaintiff and a reading of the documents in my case file.

The undersigned affirms that the foregoing statements are true, under the penalty of perjury.

Dated: New York, New York
September 17, 2010


By: Jeffrey L. Emdin, Esq.